

By: Creighton, Aliseda, Kleinschmidt,  
Jackson, Sheets, et al.

H.B. No. 274

Substitute the following for H.B. No. 274:

By: Jackson

C.S.H.B. No. 274

A BILL TO BE ENTITLED

AN ACT

relating to the reform of certain remedies and procedures in civil actions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. EARLY DISMISSAL OF ACTIONS

SECTION 1.01. Section 22.004, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The supreme court shall adopt rules to provide for the dismissal of certain causes of action that the supreme court determines should be disposed of as a matter of law on motion and without evidence.

SECTION 1.02. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.021 to read as follows:

Sec. 30.021. AWARD OF ATTORNEY'S FEES IN RELATION TO CERTAIN MOTIONS TO DISMISS. In a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss filed under the rules adopted by the supreme court under Section 22.004(g), Government Code, the court may award costs and reasonable and necessary attorney's fees to the prevailing party that the court determines are equitable and just.

ARTICLE 2. EXPEDITED CIVIL ACTIONS

SECTION 2.01. Section 22.004, Government Code, is amended by adding Subsection (h) to read as follows:

(h) The supreme court shall adopt rules to promote the

1 prompt, efficient, and cost-effective resolution of civil actions  
2 in which the amount in controversy, inclusive of all claims for  
3 damages of any kind, whether actual or exemplary, a penalty,  
4 attorney's fees, expenses, costs, interest, or any other type of  
5 damage of any kind, is more than \$10,000 but does not exceed  
6 \$100,000. The rules shall address the need for lowering discovery  
7 costs in these actions and the procedure for ensuring that these  
8 actions will be expedited in the civil justice system. The supreme  
9 court may not adopt rules under this subsection that conflict with a  
10 provision of:

- 11           (1) Chapter 74, Civil Practice and Remedies Code;  
12           (2) the Family Code;  
13           (3) the Property Code; or  
14           (4) the Tax Code.

15           ARTICLE 3. NO IMPLIED CAUSE OF ACTION

16           SECTION 3.01. Subchapter C, Chapter 311, Government Code,  
17 is amended by adding Section 311.035 to read as follows:

18           Sec. 311.035. NO IMPLIED CAUSE OF ACTION. A statute may not  
19 be construed to create a cause of action unless the statute by clear  
20 and unambiguous language creates a cause of action.

21           ARTICLE 4. APPEAL OF CONTROLLING QUESTION OF LAW

22           SECTION 4.01. Section 51.014, Civil Practice and Remedies  
23 Code, is amended by amending Subsections (d) and (e) and adding  
24 Subsection (f) to read as follows:

25           (d) On a party's motion or on its own initiative, a trial  
26 court in a civil action [~~A district court, county court at law, or~~  
27 ~~county court~~] may, by [issue a] written order, permit an appeal from

1 an order that is [~~for interlocutory appeal in a civil action~~] not  
2 otherwise appealable [~~under this section~~] if:

3 (1) [~~the parties agree that~~] the order to be appealed  
4 involves a controlling question of law as to which there is a  
5 substantial ground for difference of opinion; and

6 (2) an immediate appeal from the order may materially  
7 advance the ultimate termination of the litigation[~~, and~~

8 [~~(3) the parties agree to the order~~].

9 (e) An appeal under Subsection (d) does not stay proceedings  
10 in the trial court unless:

11 (1) the parties agree to a stay; or

12 (2) [~~and~~] the trial or appellate court[~~, the court of~~  
13 ~~appeals, or a judge of the court of appeals~~] orders a stay of the  
14 proceedings pending appeal.

15 (f) An appellate court may accept an appeal permitted by  
16 Subsection (d) if the appealing party, not later than the 15th day  
17 after the date the trial court signs the order to be appealed, files  
18 in the court of appeals having appellate jurisdiction over the  
19 action an application for interlocutory appeal explaining why an  
20 appeal is warranted under Subsection (d). If the court of appeals  
21 accepts the appeal, the appeal is governed by the procedures in the  
22 Texas Rules of Appellate Procedure for pursuing an accelerated  
23 appeal. The date the court of appeals enters the order accepting  
24 the appeal starts the time applicable to filing the notice of  
25 appeal.

26 SECTION 4.02. Section 51.015, Civil Practice and Remedies  
27 Code, is amended to read as follows:

1           Sec. 51.015. COSTS OF APPEAL. In the case of an appeal  
2 brought pursuant to Section 51.014(a)(6) or (d) [~~51.014(6)~~], if the  
3 order appealed from is affirmed, the court of appeals shall order  
4 the appellant to pay all costs and reasonable attorney fees of the  
5 appeal; otherwise, each party shall be liable for and taxed its own  
6 costs of the appeal.

7           SECTION 4.03. Section 22.225(d), Government Code, is  
8 amended to read as follows:

9           (d) A petition for review is allowed to the supreme court  
10 for an appeal from an interlocutory order described by Section  
11 51.014(a)(3), (6), or (11), or (d), Civil Practice and Remedies  
12 Code.

13                   ARTICLE 5. RECOVERY OF ATTORNEY'S FEES

14           SECTION 5.01. Section 38.001, Civil Practice and Remedies  
15 Code, is amended to read as follows:

16           Sec. 38.001. RECOVERY OF ATTORNEY'S FEES. A person may  
17 recover reasonable attorney's fees from an individual or  
18 corporation, in addition to the amount of a valid claim and costs,  
19 if the claim is for:

- 20                   (1) rendered services;
- 21                   (2) performed labor;
- 22                   (3) furnished material;
- 23                   (4) freight or express overcharges;
- 24                   (5) lost or damaged freight or express;
- 25                   (6) killed or injured stock; or
- 26                   (7) a sworn account [~~, or~~
- 27                   ~~[(8) an oral or written contract]~~].

1 SECTION 5.02. Chapter 38, Civil Practice and Remedies Code,  
2 is amended by adding Section 38.0015 to read as follows:

3 Sec. 38.0015. ORAL AND WRITTEN CONTRACTS. The prevailing  
4 party may recover reasonable attorney's fees from an individual,  
5 corporation, or other legal entity if the claim is for breach of an  
6 oral or written contract.

7 SECTION 5.03. Section 38.002, Civil Practice and Remedies  
8 Code, is amended to read as follows:

9 Sec. 38.002. PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES. To  
10 recover attorney's fees under this chapter:

11 (1) the person seeking to recover attorney's fees  
12 [~~claimant~~] must be represented by an attorney;

13 (2) the claimant must present the claim to the  
14 opposing party or to a duly authorized agent of the opposing party;  
15 and

16 (3) payment for the just amount owed must not have been  
17 tendered before the expiration of the 30th day after the claim is  
18 presented.

19 ARTICLE 6. ALLOCATION OF LITIGATION COSTS

20 SECTION 6.01. Sections 42.001(5) and (6), Civil Practice  
21 and Remedies Code, are amended to read as follows:

22 (5) "Litigation costs" means money actually spent and  
23 obligations actually incurred that are directly related to the  
24 action [~~case~~] in which a settlement offer is made. The term  
25 includes:

26 (A) court costs;

27 (B) reasonable deposition costs;

1           (C) reasonable fees for not more than two  
2 testifying expert witnesses; and

3           (D) [~~(C)~~] reasonable attorney's fees.

4           (6) "Settlement offer" means an offer to settle or  
5 compromise a claim made in compliance with Section 42.003 [~~this~~  
6 ~~chapter~~].

7           SECTION 6.02. Sections 42.002(b), (d), and (e), Civil  
8 Practice and Remedies Code, are amended to read as follows:

9           (b) This chapter does not apply to:

- 10           (1) a class action;
- 11           (2) a shareholder's derivative action;
- 12           (3) an action by or against a governmental unit;
- 13           (4) an action brought under the Family Code;
- 14           (5) an action to collect workers' compensation  
15 benefits under Subtitle A, Title 5, Labor Code; or
- 16           (6) an action filed in a justice of the peace court or  
17 a small claims court.

18           (d) This chapter does not limit or affect the ability of any  
19 person to:

20           (1) make an offer to settle or compromise a claim that  
21 does not comply with Section 42.003 [~~this chapter~~]; or

22           (2) offer to settle or compromise a claim in an action  
23 to which this chapter does not apply.

24           (e) An offer to settle or compromise that does not comply  
25 with Section 42.003 [~~is not made under this chapter~~] or an offer to  
26 settle or compromise made in an action to which this chapter does  
27 not apply does not entitle any [~~the offering~~] party to recover

1 litigation costs under this chapter.

2 SECTION 6.03. Section 42.003, Civil Practice and Remedies  
3 Code, is amended to read as follows:

4 Sec. 42.003. MAKING SETTLEMENT OFFER. (a) After a  
5 defendant files a declaration under Section 42.002(c), the  
6 defendant filing the declaration and any party with a claim against  
7 that defendant may make a settlement offer to settle all claims in  
8 the action between the parties.

9 (b) A settlement offer must:

- 10 (1) be in writing;
- 11 (2) state that it is made under this chapter;
- 12 (3) state the terms by which the claims may be settled;
- 13 (4) state a deadline by which the settlement offer  
14 must be accepted; and
- 15 (5) be served on all parties to whom the settlement  
16 offer is made.

17 (c) The parties are not required to file a settlement offer  
18 with the court.

19 SECTION 6.04. Section 42.004(c), Civil Practice and  
20 Remedies Code, is amended to read as follows:

21 (c) The litigation costs that may be recovered by the  
22 offering party under this section are limited to those litigation  
23 costs incurred by the offering party after the date the rejecting  
24 party rejected the earliest settlement offer that entitles the  
25 party to an award of litigation costs under this section.

26 SECTION 6.05. Sections 42.004(d) and (g), Civil Practice  
27 and Remedies Code, are repealed.

ARTICLE 7. EFFECTIVE DATE

SECTION 7.01. The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

SECTION 7.02. (a) Except as provided by Subsection (b) of this section:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

(b) Articles 4, 5, and 6 of this Act take effect September 1, 2011.